



JTPA

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Serving the People of California

DIRECTIVE

Date: May 1, 1997

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TO: SERVICE DELIVERY AREA ADMINISTRATORS
PRIVATE INDUSTRY COUNCIL CHAIRPERSONS
JTPD PROGRAM OPERATORS
EDD JOB SERVICE OFFICE MANAGERS
JTPD STAFF

SUBJECT: WORK OPPORTUNITY TAX CREDIT PROGRAM

EXECUTIVE SUMMARY:

Purpose:

The purpose of this Directive is to provide guidance to Service Delivery Areas (SDA) and Private Industry Councils (PIC) regarding issuing Conditional Certifications for the Work Opportunity Tax Credit (WOTC) program.

Scope:

This Directive applies to all California SDAs, PICs, and to other entities contracting directly with the State of California, Employment Development Department (EDD), to operate programs funded under the Job Training Partnership Act (JTPA).

Effective Date:

This Directive is effective immediately.

REFERENCES:

- Small Business Job Protection Act of 1996 (Public Law 104-188)
- U.S. Department of Labor Employment Service Program Letter 5-97
- Draft Employment Training Handbook 377, the Work Opportunity Tax Credit Program

STATE-IMPOSED REQUIREMENTS:

This document contains state-imposed requirements that are printed in ***bold, italic*** type.

FILING INSTRUCTIONS:

Retain this Directive until further notice.

BACKGROUND:

On August 20, 1996, President Clinton signed the Small Business Job Protection Act of 1996 (Public Law 104-188). This legislation includes the WOTC, which replaces the Targeted Jobs Tax Credit that expired December 31, 1994. The WOTC encourages employers to hire individuals from certain groups who consistently have the most difficulty in securing employment. Employers who hire individuals from one of seven targeted groups will be eligible to receive a federal tax credit. The duration of the WOTC program is from October 1, 1996, through September 30, 1997.

The WOTC is figured only on qualified first year wages paid to or incurred on behalf of target group individuals who begin work for the employer after September 30, 1996. The credit is equal to 35 percent of the first \$6,000 in qualified wages for a maximum allowable credit of \$2,100. For summer youth, the maximum credit equates to \$1,050 (35% of \$3,000). The actual amount of tax credit depends on several factors including the employer's tax rate, the target group of the applicant, and the amount of wages earned. To claim the credit, an employer must employ the WOTC eligible individual for a minimum of 400 hours or 180 days (120 hours or 20 days for summer youth).

The federal Departments of Treasury and Labor share administrative responsibility for the WOTC program. The Department of Treasury, through the Internal Revenue Service (IRS), administers the tax provisions of the credit while the Department of Labor, through the Employment and Training Administration (ETA), awards grants to states for administration of the eligibility determination and certification provisions. State Employment Security Agencies (EDD in California) issue WOTC Certifications (conditional and final). However, by federal law, EDD may delegate Conditional Certifications to a participating agency (as defined below).

POLICY AND PROCEDURES:

WOTC Certification Procedures:

For the purposes of the WOTC, a prospective employee is not considered a member of one of the targeted groups unless the individual is certified as such by the EDD Work Opportunity Tax Credit Center. The EDD's certification requirement may be satisfied in either of two ways. Under one approach, the employer must complete a pre-screening notice, Form 8850 (Attachment 1), Work Opportunity Credit Pre-Screening Notice and Certification Request and Form ETA 9061, Individual Characteristics Form (Attachment 1A). These forms, which contain information on the prospective employee, must be completed on or before the day the individual is offered employment. Within 21 days after the individual begins work, the employer must submit the completed forms 8850 and 9061 to EDD as part of a request for

certification. Subsequently, EDD returns the forms to the employer certifying the individual as a member of a targeted group.

Under the other approach, an employer may receive a Conditional Certification from EDD or a participating agency on or before the day the prospective employee begins work, stating that the individual appears to be a member of a targeted group. The Conditional Certification is issued on form ETA 9062 (DE 8726) (Attachment 2), Conditional Certification Work Opportunity Tax Credit. The employer then submits this form, along with Form 8850, to EDD for final certification. The employer must submit the Form 8850 and ETA 9062 (DE 8726) within 21 days after the participant starts work.

The EDD retains the responsibility for final certifications. However, Conditional Certifications will be delegated to participating agencies. A participating agency is defined as a federal, state, or local government agency or a grantee of these agencies. Participating agencies may include, but are not limited to, JTPA grantees, Job Corps Centers, School-to-Career transition grantees, Vocational Rehabilitation agencies, city and county welfare offices, Veterans Affairs offices, and other veterans-serving organizations.

Federal law requires that formal cooperative agreements be negotiated between EDD and participating agencies, allowing those agencies to assist in the WOTC initiative by performing eligibility determinations and issuing Conditional Certifications. Rather than require individual SDAs to negotiate Memoranda Of Understanding with EDD, the Job Training Partnership Division (JTPD) has entered into an Intra-agency Agreement with Job Service Division (JSD), EDD's administrator of the WOTC program.

Conditional Certification Procedures:

The Conditional Certification process begins when a jobseeker comes to the local employment office, SDA, or other participating agency to perform a job search, or in response to a positive recruitment.

To determine if a job-ready applicant is eligible, and to issue a Conditional Certification for the WOTC program, the SDA must complete the Conditional Certification form ETA 9062 (DE 8726). This is a required form. No modification or substitution of this form may be made. Complete form ETA 9062 with the following information:

1. Enter the initiating agency code. ***For SDA/PIC purposes, this will be the three digit code assigned by the Job Training Automation system.*** Additionally, indicate with a check mark that the initiating agency is a participating agency rather than EDD. Attachment 3 lists the codes to be used for this section.

2. Enter the control number. ***This will be the participant's social security number.*** Again, indicate with a check mark that this form is initiated by a participating agency.
3. Under "Type of Conditional Certification Determination," distinguish between "Original," if the applicant is being processed for the first time; or "Revalidation," if the eligibility process was performed within the previous 12-month period (45 days for the ex-felon and summer youth target groups only). Otherwise, the Conditional Certification is counted as original.
4. Enter the date (month, day, and year) on which the eligibility determination is completed.
5. Enter the following address for the EDD office issuing the final certification:
***Employment Development Department
Work Opportunity Tax Credit Center
P.O. Box 1408
Roseville, CA 95661***
6. Sign and date the ETA 9062 (DE 8726), Conditional Certification.
7. Enter the area code and telephone number of agency issuing the Conditional Certification.
8. Enter the applicant's full name.
9. Enter the applicant's social security number.
10. Enter the applicant's home address, including apartment number and zip code.
11. Enter the target group code. See the WOTC target group designations listed below to obtain the correct alpha code.
12. Have the applicant sign the Conditional Certification form.
13. Enter the month, day, and year when the Conditional Certification expires. The validity period for Conditional Certifications requiring an economic determination, such as ex-felons, or for summer youth employees, is 45 days. Conditional Certifications that do not require an economic determination have no predetermined validity period but are required to meet the specific requirements for their target group at the time of hire and/or start date.

The participant is provided the original Conditional Certification form. The participating agency may also include a copy of the Form 8850 and may assist in

completion of the applicant section. No supporting documentation is required to accompany the Conditional Certification form when presented to employers. The participant will present the original Conditional Certification form to prospective employers during the interview/hiring process. If the participant is offered employment, it is the employer's responsibility to complete boxes 14 through 17 on the Conditional Certification form and submit it to EDD for final certification.

By federal law, participating agencies are required to retain a copy of the Conditional Certification form and supporting documentation for a period of five years after the Conditional Certification is issued. During each quarter the EDD will draw, for the purposes of auditing, a ten percent sample of all certifications issued during the quarter, including those for qualified summer youth employees. The audit will be conducted to establish the credibility and reliability of the eligibility determination and certification process. Should the random draw include Conditional Certifications issued by participating agencies, these agencies may be contacted by EDD and requested to submit copies of the documentation that support their finding of WOTC target group eligibility.

WOTC Target Group Designations:

A. Qualified Recipient of AFDC

Any individual who is certified by the designated local agency as being a member of a family receiving welfare or Aid to Families with Dependent Children (AFDC), or a successor program, who has received benefits for the 9-month period ending during the 9-month period ending on the hiring date.

B. Qualified Veteran

Any veteran who:

- is a member of a family receiving assistance under a Title IV-A program (AFDC, or a successor program) for at least a 9-month period which ended during the 12-month period ending on the hiring date, or
- is a member of a family receiving assistance under the Food Stamp program under the Food Stamp Act of 1977 for a 3-month period ending during the 12-month period ending on the hiring date, and
- has served on active duty (other than active duty for training) in the Armed Forces of the United States for a period of more than 180 days, or was discharged or released from active duty in the Armed Forces of the United States for a service-connected disability, and
- did not have any day during the 60-day period ending on the hiring date which was a day of "extended active duty" in the Armed Forces of the United States.

C. Qualified Economically Disadvantaged Ex-Felon

Any person who:

- has been convicted of a felony under any statute of the United States or any state, and
- has a hiring date which is not more than one year after the later of the date on which he/she was so convicted or the date released from prison, and
- is a member of an economically disadvantaged family.

The definition of the ex-felon target group has been clarified, in past legislation, to treat an individual as convicted if a state court places the individual on probation without a finding of guilty (deferred adjudication).

Ex-felons who are participating in a transitional program, e.g., work release, are eligible for the WOTC initiative if they were convicted of a felony and are members of an economically disadvantaged family.

An economically disadvantaged determination means a person who is a member of a family determined by EDD to be a family which had an income 70 percent or less of the Lower Living Standard Income Level (LLSIL). This determination is made based upon annualizing the income received during the six months immediately preceding the earlier of the month in which the starting date occurs, or in which the determination is made. The LLSIL used shall be the one in effect at the time of the hire date and which covers the geographic area for which the determination is made.

Family/member of a family means one or more persons living in a single residence who are related to each other by blood, marriage, or adoption. A step-child or a step-parent is considered to be related by marriage.

D. High-Risk Youth

Any person who:

- is at least age 18, but not yet age 25, on the hiring date, and
- has his/her principal place of abode within an Empowerment Zone or Enterprise Community.

See Attachment 4 and 5 for additional information regarding Empowerment Zones or Enterprise Communities.

E. Vocational Rehabilitation Referral

Any person who:

- has a physical or mental disability which, for that individual, constitutes or

results in a substantial handicap to employment, and

- was referred to the employer upon, or at any time after, completing or while receiving rehabilitative services pursuant to an individualized written rehabilitation plan under a state plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973, or
- was referred by a vocational rehabilitation program for veterans, carried out under Chapter 31 of Title 38, U.S. Code.

F. Qualified Summer Youth

Any person who:

- performs services for the employer between May 1 and September 15, and
- has attained age 16, but not yet age 18, on the hiring date or, if later, on May 1 of the calendar year involved, and
- has not been employed by the same employer prior to the 90-day (summer) period between May 1 and September 15, and
- has her/his principal place of abode within an Empowerment Zone or Enterprise Community.

G. Food Stamp Recipient

Any person who:

- has attained the age of 18, but not yet age 25, on the hiring date, and
- is a member of a family receiving assistance under a food stamp program under the Food Stamp Act of 1977 for the 6-month period ending on the hiring date, or
- received such assistance for at least 3-months of the 5-month period ending on the hiring date, in the case of a family member who has ceased to be eligible for such assistance.

Attachment 6 lists types of acceptable documentation that may be used when performing Conditional Certification eligibility determinations.

Special Note: OJT Payments:

If, for any period, an employer receives federally-funded payments for On-the-Job Training (OJT) for an employee, none of the wages paid to that employee for the OJT period qualify for the WOTC.

While the wages paid to the employee during the OJT period do not qualify the employer for a tax credit, the time spent by the employee receiving OJT qualifies the

employer towards fulfilling the minimum employment period requirement (retention period).

ADDITIONAL INFORMATION:

The EDD established a web site regarding the WOTC program. Additional information regarding the WOTC program may be found at:

<http://www.edd.cahwnet.gov/wotcind.htm>

ATTACHMENTS:

As attachments, this Directive includes copies of form ETA 8850, form ETA 9061 (DE 8725), form ETA 9062 (DE 8726), a listing of initiating agency codes, Federal Empowerment Zones and Enterprise Communities, information regarding acceptable documentation, and employer and participant brochures that are available through local EDD offices.

ACTION:

Bring this Directive to the attention of appropriate staff.

INQUIRIES:

Address questions regarding this Directive to your assigned Program Manager or to Georganne Pintar, Manager of JTPD's Policy Unit, at (916) 654-7611.

/S/ BILL BURKE
Acting Chief

Attachments can be downloaded from <http://www.edd.cahwnet.gov/wotcform.htm>. Copies may also be obtained by e-mailing JTPD at **JTPDLIB@EDD.CA.GOV** or contacting Jim Scholl at (916) 657-4610.

1. Department of the Treasury Internal Revenue Service Work Opportunity Credit Pre-Screening Notice and Certification Request (Form 8850 (9-96))
2. Employment Service Employment and Training Administration Individual Characteristics Form Work Opportunity Tax Credit (ETA 9061 (Oct 1996))
3. Department of Labor Employment and Training Administration Conditional Certification Work Opportunity Tax Credit
4. Initiating Agency Codes
5. Federal Empowerment Zones and Enterprise Communities (EZ/EC)
6. EZ/EC Zip Codes for California
7. Examples of Documentary Evidence or Collateral Contact for Establishing and Verifying Employment